

MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of December 11, 2013

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

**PUBLIC HEALTH COUNCIL OF THE
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
Henry I. Bowditch Public Health Council Room, 2nd Floor
250 Washington Street, Boston MA**

Docket: Wednesday, December 11, 2013, 9:00 AM

1. ROUTINE ITEMS:

- a. Introductions
- b. Record of the Public Health Council Meeting of November 13, 2013
(Approved)

2. FINAL REGULATION:

Proposed amendments to 105 CMR 140.000: *Licensure of Clinics*, Implementing Changes Regarding Limited Services Clinics, Pursuant to Chapter 224 of the Acts of 2012. **(Approved)**

3. INFORMATIONAL PRESENTATION:

Measuring the Impact of Complex Community Programs: A Mass in Motion Case Study

4. EXECUTIVE SESSION

Pursuant to M.G.L. c.30A, § 21(a)(3), the Public Health Council will vote to enter Executive Session for the purpose of discussing strategy with respect to litigation where discussion in open session would have a detrimental effect on the litigating position. Specifically, the Public Health Council will discuss *Ethan Handwerker vs. Commonwealth of Massachusetts, et al.*

Public Health Council

Presented below is a summary of the meeting, including time-keeping, attendance and votes cast.

Date of Meeting: Wednesday, December 11, 2013

Beginning Time: 9:03 AM

Ending Time: 11:02 AM

Attendance and Summary of votes

Board Member	Attended	Item 1 b.	Item 2
		Record of the Public Health Council Meeting of November 13, 2013	Proposed amendments to 105 CMR 140.000: <i>Licensure of Clinics</i> , Implementing Changes Regarding Limited Services Clinics, Pursuant to Chapter 224 of the Acts of 2012
Cheryl Bartlett	Yes	Yes	Yes
Edward Bernstein	Yes	Yes	Yes
Derek Brindisi	Yes	Yes	Yes
Harold Cox	Yes	Yes	Yes
John Cunningham	No	---	---
Michele David	No	---	---
Meg Doherty	No	---	---
Michael Kneeland	Yes	Yes	Yes
Paul Lanzikos	Yes	---	Yes
Denis Leary	Yes	Yes	---
Lucilia Prates-Ramos	Yes	Yes	Yes
Jose Rafael Rivera	Yes	(2 nd)/ Yes	(M) / Yes
Meredith Rosenthal	Yes	Yes	(2 nd)/ Yes
Alan Woodward	Yes	Yes	Yes
Michael Wong	Yes	(M) / Yes	Yes
Summary	11 members attended	11 Approved with votes	10 Approved with votes

(M): Made motion

(2nd): Seconded motion

PROCEEDINGS

A regular meeting of the Massachusetts Department of Public Health's Public Health Council (M.G.L. C17, §§ 1, 3) was held on Wednesday, December 11, 2013 at the Massachusetts Department of Public Health, 250 Washington Street, Henry I. Bowditch Public Health Council Room, 2nd Floor, Boston, Massachusetts 02108.

Members present were: Department of Public Health Commissioner Cheryl Bartlett (chair), Dr. Edward Bernstein, Mr. Harold Cox, Mr. Derek Brindisi, Mr. Jose Rafael Rivera, Dr. Alan Woodward, Mr. Denis Leary, Dr. Michael Kneeland and Dr. Michael Wong, Ms. Lucilia Prates-Ramos, Mr. Paul Lanzikos, and Dr. Meredith Rosenthal

Absent members were: Dr. John Cunningham, Ms. Meg Doherty, and Dr. Michele David. Also in attendance was Attorney Donna Levin, General Counsel, Massachusetts Department of Public Health.

Commissioner Bartlett called the meeting to order at **9:03 AM** and reviewed the agenda.

ITEM 1b: Record of the Public Health Council Meeting of November 13, 2013

Commissioner Bartlett asked if there were any changes to the minutes of the Public Health Council meeting of November 13, 2013. Dr. Wong noted a correction necessary on page 7, substituting Beth Israel Deaconess Hospital for Brigham and Women's in the second paragraph. Dr. Woodward noted "about" should be inserted before "food borne disease" in the next-to-last paragraph on page 6 and that "institution" should be made plural in the third sentence of the second paragraph on page 7. Dr. Bernstein noted the need to remove references to Pediatric Immunization regulations from the Reliant New England Hospital Determination of Need discussion on pages 4-5.

Dr. Wong made the motion to approve the minutes of November 13, 2013, as revised. The motion was seconded by Mr. Rivera. The revised minutes were approved by eleven members voting in the affirmative. There were no abstentions or recusals.

ITEM 2: FINAL REGULATION: Proposed amendments to 105 CMR 140.000: *Licensure of Clinics*, Implementing Changes Regarding Limited Services Clinics, Pursuant to Chapter 224 of the Acts of 2012

Madeleine Biondolillo, MD, Associate Commissioner and Carol Balulescu, Deputy General Counsel, presented the proposed amendments to 105 CMR 140.000: *Licensure of Clinics*, Implementing Changes Regarding Limited Services Clinics, Pursuant to Chapter 224 of the Acts of 2012.

Discussion about the proposed regulations ensued. Dr. Wong asked about services for adolescents and more broadly about services within scope of practice, expressing concern about the prospect, for instance, that an adult internist might provide pediatric services. Attorney Balulescu said the regulations clearly require appropriate training and licensing, in compliance with statutory requirements, and Dr. Biondolillo noted the Mass. Board of Registration in Nursing authorizes Nurse Practitioners to treat families. Dr. Woodward expressed concern about patients getting episodic care for chronic disease in a Limited Service Clinic (LSC), compared to people being treated in medical homes. He also raised concerns about provision of anesthesia outside of an

Ambulatory Surgical Center, the profit model of LSCs, and the proposed requirement to post offered services, rather than requiring provider disclosure, as in previous versions of the regulations. Commissioner Bartlett explained that the changes brought the regulation into compliance with the statute and also noted the change was intended to address Mass. Medical Society concerns about the earlier requirement for disclosure. Dr. Woodward noted the Public Health Council had requested a report to be delivered in 2009 about quality of care in LSCs when the regulations were first promulgated, and he reiterated the need for such a report to assess whether LSCs are providing "the right care to the right people by the right providers." Mr. Cox agreed on the need for a report and asked for information about continuity of care, access, locations, patient complaints, other issues raised as concerns in 2008 when the regulation was first passed. Dr. Biondolillo shared anecdotal information suggesting LSCs are working well, and Commissioner Bartlett noted LSCs are supporting Chapter 224 health care reform goals by reducing inappropriate use of hospital care. Mr. Rivera asked if LSCs need to comply with Culturally and Linguistically Appropriate Service (CLAS) standards. Attorney Balulescu said yes. Mr. Brindisi noted that refugees and immigrants often use free clinics in urban communities and that free clinics pose regulatory oversight challenges. He cited an example of a free clinic operating in a church in Worcester. He asked whether the LSC regulations can be expanded or other methods devised to address needs to improve medical home opportunities for vulnerable populations. Commissioner Bartlett noted potential problems with a clinic operating in a church, and Dr. Biondolillo said she would welcome a discussion with community members. Dr. Bernstein asked whether referral mechanisms can be required by regulation. Attorney Balulescu explained the referral provisions of Chapter 224, which prohibits LSCs from acting as Personal Care Physicians and providing referrals to specific providers. Ms. Prates Ramos noted fragmentation happens even with medical homes and asked that a future report include info about services provided to people with limited English, numbers of Serious Reportable Events, and compliance with CLAS standards. Commissioner Bartlett pledged DPH would provide a future report on LSCs.

Mr. Rivera moved to approve proposed amendments to 105 CMR 140.000: *Licensure of Clinics, Implementing Changes Regarding Limited Services Clinics, Pursuant to Chapter 224 of the Acts of 2012*. The motion was seconded by Dr. Rosenthal and approved by ten voting members. Mr. Leary left the meeting during the discussion and was absent during this vote. He returned to the meeting shortly after the vote, at 10:01 a.m.

ITEM 3: INFORMATIONAL PRESENTATION: Measuring the Impact of Complex Community Programs: A Mass in Motion Case Study

Tom Land, PhD, Director of Health Information Policy and Informatics provided an informational presentation on Measuring the Impact of Complex Community Programs: A Mass in Motion Case Study.

Following the presentation, Dr. Wong asked if there are ways of controlling for self-reporting biases. Dr. Land said staff are looking into this and emphasized value of confirmatory data. Mr. Rivera asked about the efficacy of phone surveys. Dr. Land reported DPH is surveying 20% of the sample with cell phones and hasn't detected significant differences. In reply to additional questions from Mr. Rivera, Dr. Land noted DPH is surveying in English, Spanish, and Portuguese and that respondents are being asked about different brand names, e.g. Mass in Motion and Fit in Fitchburg, where research has indicated difference in name recognition for the program. Dr. Woodward asked about cell survey methodology and about the "chicken and egg" dynamic of how

customer demand drives grocery store food offerings versus how what is offered for sale affects consumption. Dr. Land said researchers are looking for findings to help support a reasonable understanding about causality. Dr. Bernstein asked about the impact on student consumption of healthy school food offerings. He also asked about impacts of the economy and disposable income on demand for and consumption of healthier food and, similarly, about density of alcohol distribution on consumption patterns. Dr. Land said researchers are investigating these issues and that more information is available about tobacco, compared to alcohol, with respect to economic influences and distribution patterns.

The meeting adjourned at 10:40 AM on a motion from Dr. Woodward and seconded by Dr. Rosenthal. It was passed unanimously without discussion.

ITEM 4: EXECUTIVE SESSION: Pursuant to M.G.L. c.30A, § 21(a)(3), for the purpose of discussing strategy with respect to litigation where discussion in open session would have a detrimental effect on the litigating position.

Dr. Wong made a motion to move into Executive Session to receive information from DPH General Counsel Donna Levin and attorney Jamie Strong about pending litigation, *Ethan Handwerker vs. Commonwealth of Massachusetts, et al.* Dr. Rosenthal seconded the motion, and it passed unanimously. Members of the public were excused from the chamber at 10:45 a.m. The executive session concluded at 11:02 a.m. after a motion to adjourn made by Dr. Wong and seconded by Dr. Woodward. The vote was conducted by roll call, and the motion passed unanimously.

The meeting adjourned at 11:02 AM on a motion by and passed unanimously without discussion.

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

1. Docket of the meeting
2. Public Health Council Meeting Minutes from November 13, 2013
3. DoN Pending List
4. Memo on Request to Promulgate Proposed Amendments to 105 CMR 140.000: Licensure of Clinics for Expanding the Scope of Practice for Limited Service Clinics.
5. Executive Session – Ethan Handwerker vs. Commonwealth of Massachusetts, et al. materials.
6. Copies of all power point presentations (emailed upon conclusion of the meeting)

Commissioner Cheryl Bartlett, Chair